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CURRENT TOPICS

The Legal Aid and Advice Scheme: Transitional Provision

SHOULD intending litigants and their solicitors wait until the new Legal Aid and Advice Scheme is in operation, a date which we are now told cannot be before 1st July, 1950, at the earliest, or should they have regard to considerations of urgency or other factors, and commence proceedings at once? We raised this question some weeks ago (*ante*, p. 396). An official statement by the Council of The Law Society in the August issue of the *Law Society's Gazette* now gives the assurance that no one who is a party to proceedings started before the legal aid scheme comes into operation will be debarred from applying for legal aid in respect of such steps in those proceedings as have to be taken after the legal aid scheme comes into force. This ruling should give the greatest possible mitigation of any transitional hardship that might occur pending the coming into operation of the scheme, and it should also ease the responsible task of solicitors who have to advise intending litigants who may be within the scheme. The necessary regulations have not yet been made although the Bill has now become law, but solicitors can, of course, safely act now on the assurance of the Council.

Town Planning Act: the First Year of Operation

IN an interesting letter to *The Times* of 12th August, Mr. CHARLES GREENWOOD surveys the first twelve months' working of the Town and Country Planning Act, 1947. Among his conclusions he notes, first, that it is "still true to say that the professed object of the Act, to secure that land shall be freely transferred at its existing use value, is just not being achieved"—a reference to his earlier view noted at 92 SOL. J. 473, 593—and that the imposition of development charges is acting as a brake in many cases where it is in the general interest that development should take place. Conveyancing practice, Mr. Greenwood states, has been affected by the Act to a much greater degree than was generally anticipated, the work involved in the transfer of properties having increased although the remuneration for this work has remained stationary. With regard to claims on the £300m. fund, he observes that "it is of the highest importance that at the earliest possible moment some indication, if only in general terms, should be given as to the measure of compensation to be paid to the various classes into which erstwhile owners of development rights are apparently to be divided." His letter concludes with a suggestion for the holding of an inquiry into the working of the Act by a body on which local authorities and the interested professions would be represented.

Sale of Undeveloped Land: Duties of Solicitors

THE duties of solicitors who are asked to act on a proposed purchase of undeveloped land at a price which clearly exceeds the existing use value are discussed in a statement in the August issue of the *Law Society's Gazette*. Has such a solicitor any further duty than to point out to the client that the price exceeds the existing use value and that the client will have to pay a development charge on developing the property, and that the charge will be based on the difference, not between the purchase price and the developed value, but between the existing use value and the developed value? The *Gazette* states that a solicitor's primary duty is towards his client, and there is nothing illegal in paying more than existing use value. There must be borne in mind, however, the statement continues, the Central Land Board's power under s. 43 of the Town and Country Planning Act, 1947, to acquire property compulsorily. It is pointed out that there have been few instances in which the Board have exercised this power and that the procedure, involving notices to treat and local inquiries, is cumbersome. The Chairman of the Board, however, it is added, has said that the only criterion is the public interest and that, provided the Board have failed in an endeavour to purchase the land by agreement on reasonable terms, they may resort to the power. The Council make it clear that each case must be considered on its own facts, and it is for the client to decide whether to buy the property at a price in excess of existing use value.

Planning Appeals

THREE months ago (*ante*, p. 292) we referred to the institution by the Ministry of Town and Country Planning of "accompanied visits" as an alternative to a public local inquiry in the case of planning appeals where the development is of comparatively little importance and the issues are simple. These visits consisted of a meeting at the site between the Ministry's inspector and representatives of the parties to the appeal. The Ministry have now varied this less formal procedure. "Accompanied visits" are no longer referred to and, instead of a meeting on the site, the Ministry now arrange for their inspector "to attend" at the local council offices "to hear such representations as the parties to the appeal may desire to make in regard to the matter and to inspect the site." What happens after the initial meeting will depend on the particular case; it may be convenient to hold the hearing at the offices and subsequently visit the site, or it may be better to go and argue the case out on the site, but in either event the order of proceedings will be the same as in a formal local inquiry. As in the case

of accompanied visits the Ministry do not arrange for notice of the hearing to be posted on the site and do not ask the local planning authority to give notice to neighbouring owners. The number of cases in which the less formal procedure is used is rapidly increasing. In very simple cases the Ministry are beginning to determine appeals simply on written representations, though either side retains the right under the Act to require a hearing.

Town and Country Planning Act, 1947, section 19: Model Form of Purchase Notice

A USEFUL circular addressed to local authorities by the Ministry of Town and Country Planning (Circular No. 73, dated 29th July: H.M.S.O., price 1d.) contains in an appendix a model form of purchase notice under s. 19 of the 1947 Act for use by owners who claim that land has become incapable of reasonably beneficial use in its existing state, and that it cannot be rendered capable of such use (a) by carrying out permitted development, by reason of conditions attached to the planning permission, and (b) by carrying out any other development for which permission has been or would be granted. The circular points out that, although local authorities are recommended to provide copies of the form for persons intending to serve notices, a notice in any other form may well be valid and should receive the same treatment as a notice based on the model form. It is added that model forms of claims for compensation under ss. 20, 22, 27 and 79 of the Act have also been prepared by the Ministry, and copies are available to local authorities on request.

Control of Advertisements: Regulations Amended

As from 1st September next, the Town and Country Planning (Control of Advertisements) Regulations, 1948, which were discussed in some detail at 92 Sol. J. 654, are amended in a number of respects by the Town and Country Planning (Control of Advertisements) Amendment Regulations, 1949 (S.I. 1949 No. 1473). In the words of the explanatory note to the amending regulations, "reg. 4 adds to the kinds of advertisements which a local planning authority may permit to be displayed in an area which has been defined by order as an area of special control. Regulation 5 extends the permission already granted for temporary advertisements of Class III by raising the maximum size and number of contractors' boards that may be displayed on building sites without the express consent of the local planning authority (new sub-class (c)), and by including, among the kinds of local activities that may be publicised without express consent, events and activities of a political nature (new sub-class (d)). Regulation 6 (1) amends the definition of 'business premises' so as to include buildings used for the provision of services, whether for profit or otherwise, and to exclude, except in specified circumstances, buildings designed for use as dwellings. Among a number of minor and procedural amendments reg. 13 requires a local planning authority, when seeking the Minister's approval to an order defining an area of special control, to make available for public inspection, together with a copy of the order and map, a copy of the statement of reasons which they submit with the order to the Minister." A fuller account of the effect of the amendments is given in Ministry of Town and Country Planning Circular No. 74, dated 11th August, and addressed to local authorities (H.M.S.O., price 1d.).

Sale of Land: Apportionment of Schedule A Tax

Two new forms have been agreed between the Council of The Law Society and the Board of Inland Revenue for the use of vendors' solicitors on sales of land, in order to apply to the whole country the advantages of arrangements now prevailing in some parts of the country whereby a vendor's solicitor is able at short notice to ascertain details of outstanding Sched. A tax, thus obviating the necessity for undertakings and correspondence after completion. The new arrangement is to come into force immediately, according to the August issue of the *Law Society's Gazette*, and it

supersedes all existing local arrangements. Tax offices have already been supplied with copies of the forms. The Council express the hope that solicitors will avail themselves freely of this arrangement. Solicitors will make inquiries on Form 68 and will receive a reply on Form 68B. After the sale or transfer of the property has been completed they should write to the Inspector of Taxes informing him of the date of apportionment which was agreed between the vendor and the purchaser.

Redemption of Building Society Mortgages

A NEW procedure is also recommended by the Council of The Law Society in the same issue of the *Law Society's Gazette* for adoption by solicitors where an outstanding debt due to a building society under a mortgage is to be discharged out of the proceeds of sale of the mortgaged property. The procedure has been agreed with the Building Societies' Association, who are recommending its adoption by their member societies, and is as follows. Shortly before completion the vendor's solicitor should write to the purchaser's solicitor informing him of the amount owing on the mortgage, and stating that upon payment thereof the mortgage will be duly vacated. On completion, it is stated, the purchaser's solicitor should hand over a crossed banker's draft for this amount, drawn in favour of the building society mortgagee, and this draft should be accepted by the vendor in part payment of the purchase money. The bank on which the draft is drawn should be agreed beforehand by the parties to the transaction.

The Criminal Justice Act, 1948, and Endorsement of Driving Licences

THE recording of a conviction against an offender dealt with for a motoring offence by way of a probation order, conditional discharge, or absolute discharge, under s. 3 or s. 7 of the Criminal Justice Act, 1948, may now involve the endorsement of his driving licence although endorsement could not previously have been ordered under the Probation of Offenders Act, 1907. Although s. 12 (2) of the new Act provides that such a conviction is to be disregarded for the purposes of any enactment which imposes, authorises, or requires any "disqualification or disability" upon convicted persons, it would appear that these words do not include endorsement of driving licences. Section 12 (2), however, clearly prohibits disqualification from driving in cases so dealt with. In these cases, therefore, in order to see whether endorsement can or must follow conviction, it is necessary to look at the Road Traffic Acts themselves. In the case of certain offences endorsement must be ordered; for other offences endorsement must be ordered in the absence of "special reason." For yet a third group of offences disqualification is prescribed in the absence of special reason, and where disqualification follows conviction then endorsement must be ordered (Road Traffic Act, 1930, s. 6 (2)). But since s. 12 (2) of the Act of 1948 provides that a conviction under s. 3 or s. 7 of the same Act shall be disregarded for the purpose of "disqualification" it follows that it must also be disregarded for the purpose of any consequent endorsement. The operation of s. 12 (2), however, does not mean that there cannot be an endorsement in cases falling within this latter category; under s. 6 (1) of the Road Traffic Act, 1930, endorsement may be ordered on conviction of any offence "in connection with the driving of a motor vehicle," other than an offence under Pt. IV of the Act (which relates to public service vehicles). It is clear that a person using a motor vehicle whilst it is being driven, by himself or someone else, without the requisite insurance, or a person driving a motor vehicle whilst under the influence of drink, is committing an offence in connection with the driving of it, and his licence may be endorsed; but whether a person using an uninsured motor vehicle for a purpose other than driving or being driven, or a person under the influence of drink being in charge of a motor vehicle where it is not being driven, commits such an offence is at least open to argument, and it may be that in such cases there is no power to order endorsement.

MINERAL DEVELOPMENT COMMITTEE REPORT—I

THE committee appointed on 2nd August, 1946, by the then Minister of Fuel and Power under the chairmanship of Lord Westwood "to inquire into the resources of minerals in the United Kingdom, excepting coal, oil, bedded ironstone, and substances of widespread occurrence; to consider possibilities and means of their co-ordinated, orderly and economic development in the national interest, and to make recommendations in regard thereto" made their report, dated 29th March, 1949, which was issued as a blue book on the 21st July last (Cmd. 7732).

The three main recommendations of the committee are (1) that the Minister of Fuel and Power should establish a new permanent organisation, to be known as the Mineral Development Commission, largely technical in character, charged with special functions and duties and with relationships to other departments in regard to mineral development; (2) that the fee simple in the minerals dealt with in the report should be acquired by the State, and, together with the "development value" at present vested in the Central Land Board, should be transferred to the new commission; and (3) that production responsibility for the minerals included in the terms of reference which are at present with other departments should be transferred to the Minister of Fuel and Power.

In reply to a question in the House of Commons on the 25th July, namely four days after the report was published, the Minister of Fuel and Power said that the Government had decided to accept the main recommendation of the committee that the minerals included in their terms of reference should be brought into public ownership, and that the necessary legislation would be introduced in due course. He added that the other recommendations of the committee were being examined.

An appendix to the report sets out the reservations made by one of the members of the committee who disagrees with the recommendations that the minerals in question be nationalised and that a commission be established to which the fee simple in the minerals would be transferred.

The minerals which the committee have interpreted as falling within their terms of reference are described in the report as "Mineral Development Committee minerals," or, more shortly, as MDC minerals. Among metalliferous minerals they include non-ferrous ores—tin, tungsten, lead, zinc and the iron ore hematite, while among non-metalliferous minerals are included barytes, china clay, fluor spar, gypsum and a number of others, the more well known of which are salt, potash, fullers earth and talc. Among the minerals excluded from the terms of reference, but not specifically, are sand and gravel, building stones, brick, tile and crude pottery clays, slate, limestone and chalk, being "substances of widespread occurrence." In direct value of production and manpower employed the rough percentages of MDC minerals, substances of widespread occurrence, and coal are respectively 3 per cent., 11 per cent. and 86 per cent.

Four chapters of the report are devoted to a summary of the information which the committee have obtained about the mineral resources of the country which it would be out of place to refer to in this article, but it is of interest to mention that the committee appreciate that it will be difficult for their recommendations to be considered in relation only to MDC minerals, one reason being the arbitrary nature of the line of demarcation between them and those outside the terms of reference; apart from some recommendations dealing with shortage of resources the committee have no reason to suppose that their recommendations would not in general apply to the excepted mineral resources other than coal and oil. In particular, they are of opinion that the arguments that have led them to recommend the nationalisation of mineral rights for MDC minerals are equally valid for the other minerals, which in their view should be dealt with in the same manner.

It will now be convenient to turn to Chapter VIII of the report, dealing with mineral rights and planning, which leads up to the recommendation that the mineral rights be nationalised.

The report states (para. 347) that regulations made under s. 81 of the Town and Country Planning Act, 1947, and the relative section of the similar Scottish Act, empower the Minister and the Secretary of State respectively, with Treasury consent, to apply the provisions of the Acts, with necessary adaptations and modifications, to mineral workings, whereby mining operations in Great Britain, whether underground or on the surface, are now within the scope of planning control, and the State has acquired the development value in minerals. At first sight, therefore, says the report, it might seem that the statutory administrative powers already possessed by the Ministry of Town and Country Planning and the Central Land Board (and by the Secretary of State in Scotland) are already sufficient to safeguard the interests of future mineral development. The next paragraph states, however, that further examination of the provisions of the Acts and of the regulations made under them confirms the committee's opinion, originally communicated to the Minister of Fuel and Power in January, 1947, when the Town and Country Planning Bill was published, that the method devised to secure planned development and control of the use of the land surface was not intended primarily for, and can only be regarded as a stage in, a policy for securing effective control and development of our mineral resources. The conception that control over mineral workings and development can be exercised in a similar way to that over land is regarded by the committee as open to grave technical objections. While the committee recognise the necessity to bring mineral workings within the sphere of land use control generally, they do not consider that control over mineral workings in relation to land use generally, notwithstanding the existence of the positive power in the Planning Acts for the compulsory purchase of land for mineral workings or for the compulsory grant of working rights by the Railway and Canal Commission (now the High Court) which must be exercised with due regard to the economic needs of the mineral industry and the production needs of the country, can be exercised in such a way that such control could effectively be used as a means of *fostering* mineral development. Land use control of mineral workings, as provided for by the Planning Acts and regulations, though of considerable assistance to mineral development, is only regarded as negative, in the sense that it is governed by permissive legislation, while a policy to encourage mineral development must be positive. A positive policy must provide, for instance, for the starting of comprehensive exploratory schemes in certain areas, the compulsory amalgamation of undertakings where necessary on technical grounds, the metallurgical investigation of low-grade mineral deposits, and research into many kinds of mining and mineral dressing questions. Hence, the inclusion of the MDC minerals in the general provisions of the Town and Country Planning Acts can only be regarded as the first stage of a development policy, and later stages must be concerned in devising and implementing a positive policy for dealing with MDC minerals as national wasting assets, and with the discovery and development of new mineral deposits.

The report goes on to point out (para. 350) that the preparation of development plans will necessitate the scheduling of land for mineral workings. In some areas conflicting claims of other land uses will have to be resolved on a long-term basis. Technical knowledge about the occurrences and resources of the MDC minerals is regarded as totally inadequate, and in many cases could only be obtained by extensive exploration of the kind which private undertakings could not, in general, be expected to finance. Until there is a permanent authority exclusively charged with mineral development responsibility, our mineral resources

must suffer in the long run for want of an overall, long-term and properly co-ordinated policy for the country as a whole (para. 353).

As regards permission to work, it is pointed out (para. 355) that the local planning authority, whose permission is now required to start any new mine or quarry, can fix conditions under which the development is allowed to proceed, which conditions are likely mainly to be concerned with the preservation of amenities, the safeguarding of other land uses, and restoration or treatment of the site to bring it back into productive use. Recognising that it may sometimes be inadvisable for decisions with regard to certain minerals to be taken locally, the Ministry of Town and Country Planning have issued instructions to local planning authorities to inform the Minister of applications for permission to work certain specified minerals, being those in relatively short supply and including most of the MDC minerals, in order that he can consider, *inter alia*, whether responsibility for the decision can be left with the local planning authority or whether he ought to take it over for Government decision. From the long-term point of view the committee regard it as essential that the Minister should rely upon consultations with one Minister responsible for all MDC minerals, instead of having to deal, as at present, with different Ministers, according to the mineral concerned, because of the divided production responsibilities.

The report states (para. 356) that the acquisition of the development value in minerals by the State under the Planning Acts and the payment by all operators after July, 1951, of a development charge to the Central Land Board, effectively removes all incentive from mineral owners to get their minerals developed and makes mineral ownership little more than nominal. The committee allege that the development charge will replace all existing royalties, and as the charge is calculated as 100 per cent. of the difference between the (nil) existing use value of minerals and the development value, the mineral owner receives no further payment by way of royalty if the minerals are worked, other than such provision as is made for compensation in respect of surface damage or disturbance if mineral rights and surface rights are not severed. The report states (para. 357) that development charges may be expected to be roughly of the same order in amount as existing royalties and (para. 358) that the application of the Act in regard thereto is likely to be much more rigid and inflexible than that governing the terms of mining leases and royalties under the old system, the Central Land Board being primarily a revenue collecting body. There is no direct provision for the assessment of the development charge as a percentage of annual profits as distinct from a charge on output, and the report suggests (para. 360) that the former might in mining certain types of minerals be more logical and equitable to all concerned. Whatever method is used to assess the development charge, the committee are of opinion that it should not be payable otherwise than as an annual sum (para. 361) and this recommendation is made whether or not mineral rights are nationalised, so that the payments are allowable for tax purposes (para. 346).

After reviewing the steps which a prospective mineral operator will have to undertake in future, namely, to obtain planning permission with the likelihood of having to invoke the right of appeal to the Minister, to negotiate a lease with the mineral owner who (without any incentive to have his minerals worked) will probably refuse to grant it, to take action to have the right to work the minerals compulsorily assigned to him, and to get a development charge fixed by the Central Land Board, the report states (para. 364) that the effect may well be virtually to stop exploration and that it will certainly discourage it.

Paragraphs 365 to 374 of the report deal, in particular, with the nationalisation of mineral rights and the following is a summary of the principal points elaborated in that part of the report. There are strong technical arguments in favour of nationalising the MDC mineral rights and dealing with them by way of new administrative powers so as more

directly to ensure adequate exploration, development and efficient working. Mineral ownership is at present defined by long-established surface boundaries which normally have no relation to the shape and distribution of the mineral deposits underneath. An area which ought to be worked as a unit is often split up between several mineral owners. The premature closing of small mines with insufficient resources to carry exploration further has almost certainly meant that new deposits of minerals have remained undiscovered. In certain mineral areas the installation of central treatment plants might serve several small mines which could not support a plant of their own. The treatment of large areas as units for exploratory purposes is needed in future on technical grounds if new resources of certain minerals are to be discovered. At present negotiations with several mineral owners are involved and are inevitably tedious and costly. Even assuming full co-operation by mineral owners and the use, where necessary, of compulsory powers, including the additional ones now available under the Planning Acts and the extended scope of the Mines (Working Facilities) Acts, the complexity of the procedure involved, its cost, and the delay to which it must inevitably give rise, are substantial deterrents to the prospective mining operator and mineral prospecting will have little attraction in future unless something more simple can be substituted. The incentive to search for and work minerals can only be restored by reuniting the development value with the ownership of the minerals, either by the development value reverting to the mineral owner or by the ownership as well as the development value being acquired by the nation, which in either case would involve certain amendments to the 1947 Planning Acts. As regards the former alternative the committee have been unable to devise a suitable amending formula whereby mineral owners could retain sufficient of the development value to restore incentive without undermining completely the general principle of the Acts.

With regard to further compensation, if any, to be paid to the mineral owners the report says (para. 373) that this should only arise where the fee simple could be proved to have a residual value, and providing the mineral owner has successfully claimed compensation for loss of development value under the Planning Acts; further that if residual value can be proved, the amount of compensation is likely to be very small and could be assessed at a global sum and divided on the same basis as claims admitted under Pt. VI of the Act in respect of loss of development value of MDC minerals.

The committee recommend in their report (para. 400) that the acquisition of the mineral rights, in fact if not in substance already accomplished under the Planning Acts, should be completed in a manner similar to that already effected in the case of petroleum (Petroleum (Production) Act, 1934), and coal (Coal Act, 1938). This, they say, will secure the unification of all questions concerning mineral development under a properly qualified and largely technical organisation, which will act, in effect, as a national landlord for minerals.

As regards the constitution of the proposed organisation, which will, if the committee's recommendations are carried out, own the mineral resources of the country on behalf of the State, that fact and the general nature of its duties both lead the committee to suggest (para. 429) that the task could better be performed by a properly constituted commission with appropriate powers, rather than as part of, and from within, a Government department. Analogies are drawn with the Coal Commission, set up under the Coal Act, 1938, and with the Forestry Commission, both concerned with the conservation and development of natural raw materials. The committee regard analogy with the former, with extended functions in certain respects, as perhaps the closer, but as the Coal Commission is defunct the Forestry Commission is now regarded as the nearest parallel. It may be remarked, however, that as the Forestry Commission is a Government department a body analogous to it would hardly fit in with the committee's general recommendation. On the other hand, the Coal Commission was not a Government department, and hence its employees were not civil servants.

If the proposed new commission is to be set up it will have to be determined whether it is to act on behalf of the Crown, and hence is to be entitled to immunity from those statutes which do not bind the Crown. In this connection it is of interest to recall the recent case of *Tamlin v. Hannaford* (1949), 93 Sol. J. 465, where it was decided that the British

Transport Commission is not a servant or agent of the Crown and wherein Denning, L.J., stated that where Parliament intends that a new corporation should act on behalf of the Crown it, as a rule, says so expressly, as it did in the case of the Central Land Board by the Town and Country Planning Act, 1947.

F. A. E.

(To be concluded)

A Conveyancer's Diary

MORTGAGOR'S POWERS OF LEASING

CERTAIN doubts which had been felt about the correctness, as well as the justice, of the decision of Vaisey, J., in *Dudley and District Benefit Building Society v. Emerson* (1949), 93 Sol. J. 183, have now been resolved by the reversal of that decision by the Court of Appeal (a report of the decision of the latter court will be found at p. 512, *ante*). The first defendant had mortgaged a house to the plaintiff society to secure an advance, and the form of mortgage was that currently in use in such transactions. The repayment of the sum advanced, with interest, was to be made by weekly instalments; there was power reserved to the plaintiff society in the event of default on the part of the mortgagor to enter upon the premises, and the power of leasing conferred by s. 99 of the Law of Property Act, 1925, upon mortgagors in possession was expressly excluded. The mortgage also contained an attornment clause.

It appeared from the evidence that the first defendant never in fact entered into possession of the premises, but that shortly after the date of the mortgage, and notwithstanding the clause therein excluding his statutory powers of leasing, he had granted a weekly tenancy of the premises to the second defendant, who produced certain rent books as evidence of the tenancy which the first defendant had purported to grant him. The first defendant defaulted in making the weekly payments stipulated in the mortgage, and the plaintiff society thereupon took out a summons against both the defendants claiming possession of the premises. The first defendant did not appear to the summons, but the second defendant contested the claim to possession as against himself on the ground that he was the properly constituted tenant of the mortgagor and so entitled to the protection of the Rent and Mortgage Interest Restrictions Acts. The arguments before the two courts turned entirely on the applicability of these Acts to a person in the position of the second defendant, and this inquiry involved the further question of the precise extent of a mortgagor's power of leasing the mortgaged premises in such a way as to bind his mortgagee.

Vaisey, J., held that the second defendant was entitled to succeed on his defence. Leaving aside one or two subsidiary points, the reasoning on which this judgment rested was on the following lines. Section 3 (1) of the Rent and Mortgage Interest Restrictions Act, 1933, provides that no order for the recovery of possession of any dwelling-house to which the Acts apply or for the ejectment of a tenant therefrom shall be made unless the court considers it is reasonable, and unless, further, one of the well-known conditions set forth in Sched. I to that Act is satisfied in the particular case. This was admittedly not the case here, and if the second defendant could satisfy the court that he was a tenant within the meaning of that section he was, in the learned judge's view, entitled to resist the plaintiffs' claim. The question whether the second defendant was or was not a tenant in this context depended, in the judgment of Vaisey, J., on whether he was at the relevant date (i.e., the date on which possession was claimed against him by the plaintiffs by the assertion of their paramount title) in lawful possession of the premises, and this question the learned judge felt himself bound, by the reasoning of the decision in *Iron Trades Employers Insurance Association v. Union Land and House Investors, Ltd.* [1937] Ch. 313, to answer in the affirmative. This, in his view, was sufficient to decide the present case in the second defendant's favour.

A rather different view was taken in the Court of Appeal of the applicability to the present case of the decision in the *Iron Trades* case (in which, it may be noted, Vaisey, K.C., as he then was, appeared—unsuccessfully—for the plaintiffs). In the *Iron Trades* case the mortgage contained a covenant by the mortgagors (the defendants) not to exercise the powers of leasing conferred by s. 99 of the Law of Property Act, 1925, without the consent of the mortgagees (the plaintiffs). The defendants granted a yearly tenancy of part of the premises without obtaining the plaintiffs' consent, and the plaintiffs in their action asked for a declaration that the execution of the tenancy agreement granting this tenancy constituted a breach of the defendants' covenant, and for certain ancillary relief on that footing. The litigation in that case was, therefore, between mortgagor and mortgagee, and the rights of third parties were not directly in issue before the court. The decision of Farwell, J., was that, quite apart from the statutory powers of leasing originally conferred by the Conveyancing Act, 1881, and now confirmed by and contained in s. 99 of the Law of Property Act, 1925, a mortgagor in possession had always had power to grant a lease of the mortgaged premises, and such a lease was binding upon the mortgagor in that he would be estopped from disputing it as against the lessee. But such a lease was not binding upon the mortgagee, and apart from certain equitable rights to redeem, the lessee under such a lease had no rights against the mortgagee, and no estate or interest in the mortgaged premises as a result thereof. This extra-statutory power of leasing had not been affected by the enactments now contained in s. 99 of the Act of 1925, and as a matter of construction of the mortgage instrument in the particular case before him, Farwell, J., found that the defendants, in adopting a course of action which might be attributable as well to their extra-statutory as to their statutory powers, had committed no breach of a covenant which referred only to their statutory powers.

The reasoning of the decision in the *Iron Trades* case led Vaisey, J., to the conclusion that the possession of the second defendant could more accurately be described as lawful than as unlawful. Sir Raymond Evershed, M.R., preferred to extract from the earlier decision the more general proposition that any lease granted by a mortgagor to a third party in the exercise of his extra-statutory powers could not bind the mortgagee, and this proposition he found to be supported by the observations of Selborne, L.C., in *Corbett v. Plowden* (1884), 25 Ch. D. 678, at p. 681, to the effect that a lessee under a lease granted by a mortgagor in possession without the concurrence of the mortgagee has a precarious title, inasmuch as although the lease is good between himself and the mortgagor, the paramount title of the mortgagee may be asserted against both of them. In other words, in the view of the Court of Appeal, the *Iron Trades* case was no authority for the conclusion that Vaisey, J., had drawn from it in circumstances where the legality of the lessee's position was in issue not, as in that case, between lessee and mortgagor (who would be estopped from disputing it), but between lessee and mortgagee when the latter is asserting his paramount title.

On this footing the point resolved itself, in the view of the Master of the Rolls, to one of construction of some of the provisions of the Rent and Mortgage Interest Restrictions Acts. In his judgment these Acts were designed to protect tenants against landlords, and s. 3 (1) of the Act of 1933,

when read in conjunction with Sched. I to that Act, must be regarded as contemplating the protection of the tenant from ejectment at the instance of his landlord, despite the fact that there is no specific mention of "landlord" in that subsection. In the present case the plaintiff society had never accepted the second defendant as their tenant, there was no contractual relationship of any kind between them, and the society was not the landlord. The Acts, in

consequence, did not apply so as to protect the second defendant.

Both Vaisey, J., and the Court of Appeal considered some other provisions of the Rent and Mortgage Interest Restrictions Acts in this case, but found nothing in them which would assist the second defendant's case. Vaisey, J., also mentioned the attornment clause, which, however, was here inoperative. I will refer briefly to this aspect of the present case next week.

"A B C"

Landlord and Tenant Notebook

VESTING ORDERS ON FORFEITURE

IN *Creery v. Summersell* (1949), 93 SOL. J. 357, a forfeiture action in which the position as between landlord and tenant was discussed in our issue of 16th July (93 SOL. J. 458), the court had also to consider an application by underlessees for a vesting order. The short facts were that the plaintiff had let a set of rooms to the first defendant by a lease which contained, besides the usual covenant against alienation, a covenant to use them in connection with his business as a surveyor and valuer, or for residence. He sub-let to the second defendants without the required consent; the plaintiff exercised a right of re-entry; the first defendant, having unsuccessfully pleaded waiver, sought but was refused relief.

The second defendants, who had been fully aware of the provisions of the head lease and had stipulated for indemnity when taking the underlease, asked for relief by way of a vesting order under the Law of Property Act, 1925, s. 146 (7), offering an increased rent.

The subsection provides that the court may make an order vesting in the underlessee, either for the whole of the term of the forfeited lease or for any less term, the property comprised in that lease or any part of it, imposing such conditions as to execution of deeds or other documents, as to rent, costs, compensation, security "or otherwise" as the court may in the circumstances think fit.

What a court should do has been considered in a number of reported cases, of which the most instructive in such circumstances as those under review would be a group of three decisions: *Imray v. Oakshette* [1897] 2 Q.B. 218 (C.A.); *Matthews v. Smallwood* [1910] 1 Ch. 777, and *Hurd v. Whaley* [1918] 1 K.B. 448.

In *Imray v. Oakshette* relief was sought by the assignee of an underlease of a house whose assignor had obtained a licence from the mesne tenant as required by the underlease. He had entered into a formal contract without any conditions as to title; the term had some 18½ years to run, the rent was £80 a year, he paid a premium of £60 and spent some £500 on the house before being rudely awakened by a claim by someone of whose existence he had been completely unaware—for when taking the assignment he had believed that the grantor of the licence owned the freehold. In fact that grantor, one of the four defendants in the action, had taken a twenty-one-year lease less ten days underlease, a few years earlier, from another defendant, less than a week after her accepting from the plaintiff a twenty-one-year lease comprising the house and other property and prohibiting her from sub-letting, etc., without consent, which she had not troubled to seek. She had, incidentally, since assigned the lease to yet another defendant.

In support of the claim for relief, it was urged that the purchaser of the underlease had acted in good faith, that it would be hard on him to be deprived of the fruits of his expenditure and, as he offered if necessary to take over the whole property and obtain guarantees, the only motive actuating the plaintiff was a desire to appropriate improvements without having to pay for them. But the attitude of the court is shown by the following passage from the judgment of Lopes, L.J.: "It is a relief which ought to be given with caution and sparingly. It is exceptional. It could not be given to the lessee. It materially affects the interests of lessor and lessee. Before asking it the underlessee ought to be in a position to prove that he is blameless and exercised all those precautions which a reasonably cautious and careful

person would use," and from Rigby, L.J.'s "Here is a gentleman proposing to take an underlease and bargaining that he would not investigate the title, although he was going to spend money on the property. I think I ought to stop there and say that he has no case."

This reasoning was followed in *Matthews v. Smallwood*, when relief was applied for by trustees of debenture stock by which £800,000 had been advanced to brewers on the security of freehold and leasehold properties. In the case of the leaseholds this had been effected by sub-demise for unexpired residue less one day, and among them was a public-house which the company held of the defendant under a lease forbidding alienation without consent. This had never been asked for. Parker, J., apart from considering himself bound by *Imray v. Oakshette*, was "not sure that the argument on which it proceeded was not sound." Applying it, the learned judge said: "if a man says, 'This is a case where I will run the risk of there being a defect in the title,' or 'I will run the risk of the sub-demise which I am taking operating as a forfeiture,' I do not see why the court should subsequently interfere to protect him against that very risk. A prudent man, when he is advancing money upon mortgage, will investigate the title . . ."

But in *Hurd v. Whaley*, McCardie, J., dealt with a case in which an underlessee had neglected repairs and painting of two houses out of a set of five which his landlord held of the plaintiff, all of which were in disrepair contrary to covenants and conditions contained in lease and underlease. The learned judge was prepared to relieve the mesne lessor on terms which the latter was unable to comply with, and this led to consideration of the underlessee's application for a vesting order. And, of course, to consideration of the applicability of *Imray v. Oakshette*.

McCardie, J., while accepting that the underlessee had not been blameless, held that the proposition laid down in the older authority was limited to cases in which relief could not be granted to the head lessee, but went on to express the hope that the decision might some day be considered by the House of Lords as the views expressed seemed to cut down in the severest manner the beneficial intention of the enactment. His own view was that this should be construed with a generous desire to save an underlessee from the grave loss which may otherwise fall on him, and relief was granted on the applicant undertaking to accept a lease direct from the freeholder on the same terms as those on which he had held the houses from the mesne tenant.

I have grouped these cases together because they all illustrate the potential effect of an underlessee's shortcomings in the matter of prudence. But the distinction drawn in the last one between cases in which the mesne lessee could and those in which he could not be relieved under the provisions of the statute, while it sounds somewhat artificial, shows that when approaching these problems the position of the head lessor must not be lost sight of. In the course of his judgment in *Matthews v. Smallwood*, Parker, J., had occasion to observe that as far as relief to a lessee was concerned the authorities showed that the question of negligence or otherwise was immaterial. But when the law denies a lessee relief, there is something to be said for thinking twice before granting it to an underlessee in respect of the same breach.

Since the three decisions, the Law of Property Act, 1925, has extended the power to grant relief to forfeiture for breach of

covenant against alienation, and all these factors must be borne in mind when weighing the claim of the undertenants in *Creery v. Summersell*. They had deliberately incurred a risk, but were prepared to pay a higher rent if granted a vesting order; and the breach of the covenant against sub-letting is now relievable.

But it was, I think, the breach of the other covenant, the positive covenant obliging the lessor to use the rooms in connection with his business as a surveyor and valuer or for residence, which presented an almost insuperable obstacle if relievable in theory, and the court's refusal shows that,

however commendable may be a desire to save an underlessee, the position of the head lessor as shown by the head lease must not be left out of account. However unreasonable a landlord may appear to be in his positive requirements, a tenant who of his own free will enters into an agreement designed to give effect to wishes based thereon cannot expect discretion to be exercised in his favour if he ignores them, nor can a subtenant expect relief if he is unable (the underlessees in *Creery v. Summersell* had many qualifications, but were not surveyors) to fulfil them.

R. B.

HERE AND THERE

SUDDEN RETIREMENT

AFTER just over four years' practice as a silk, Sir Valentine Holmes is retiring on doctor's orders. The lights will not shine so far into the night on the ground floor of Goldsmith Building; the candle which he has been burning at both ends will be extinguished at the business end and there will be much heart searching and readjustment among the clients whose confident devotion, even while he was yet a junior, loaded (really overloaded) him with more work than almost anyone else at the Bar. Taking silk at over thirty years' standing (he was called in 1913) might have eased the burden, as he hoped it would, but there was no sign that it did. For quite a long time now every judicial vacancy moved the tipsters and wisecracks to put him in the running for the place. They said he would be another Sir Henry McCaig moving straight up from overwork at the junior Bar to glory on the Bench, and there is not a doubt that if he had wanted it that way he could have had it long ago, but he had not really the taste for a judge's life. He was too unconventional to have enjoyed its restraints or its publicity. Besides one always sensed in his personality a paradox that beneath his prodigious industry there lay stifled and (may one say?) wasted a capacity for agreeable idleness. Only a quite unusual knowledge of the law wedded to an equally rare quickness in applying it could have enabled him to cope with the sheer volume of the demands upon him. Why do men in the law overwork themselves to the point of breakdown? Generally it is that once a certain stage is reached they are carried forward, by sheer momentum, as helplessly as if they were in an express train. Certain it is that Sir Valentine became a slave of the Temple, only by stealth, as it were, slipping the chain that kept him circumscribed within the limits of business chambers by the Temple Church and residential chambers in the dreary pile of Temple Gardens. Perhaps in the friendly convivial air of his native Dublin things might have been different with him. The law, they say, is a jealous mistress but she is a lot better company in Ireland than in England.

HOLMES, L.J.

SIR VALENTINE HOLMES had for his father Holmes, L.J., of the Irish Court of Appeal. For his portrait one turns instinctively to Maurice Healy, and not in vain. The Lord Justice, he says, "was short, bearded, and looked like a severe edition of Father Christmas attempting to disguise himself as a retired admiral. He was a silent man of very deep feelings which he rarely showed." From the same authority one gathers that he is the true hero of the piece of legal folklore, repeated in so many contexts, of the judge and the elderly prisoner sentenced to a long term of penal servitude. "Ah! my lord," he cried, "I'm a very old man and

I'll never do that sentence." "Well," said the judge "try to do as much of it as you can." Two at least of the descendants of the Lord Justice (besides Sir Valentine) followed the law. His second son, Sir Hugh Holmes, was called to the Irish Bar in 1910, took silk in 1920, and since 1929 has been Procurator-General of the Mixed Court of Appeal in Alexandria. Of him and his service in the first Great War Healy wrote affectionately as a comrade in arms: "On November 30, 1917, he was overrun and surrounded when the Germans broke our line near Cambrai... but he never abandoned a foot of ground and, with his guns pointing to every point of the compass, the gunners defending themselves with rifle and bayonet, he drove back the enemy and helped to restore the broken flanks in front of him." A daughter of the Lord Justice married into the law. Her husband became Sir Denis Henry, first Chief Justice of Northern Ireland. Their son, James, was called to the English Bar and since 1946 has been Crown Counsel in Tanganyika.

RETIRING MODESTY

THE modesty of Sir Valentine Holmes will make him, one day, the despair of biographers. In "Who's Who" he has succeeded in shrinking his life and achievements into precisely four lines. He is equally modest in the face of the camera. Two years ago the publishers of the full text of *Lea v. Justice of the Peace, Ltd.* (the case of the intrusive Press photographer at the society wedding), had no difficulty in finding suitable pictures of the learned judge and counsel for the plaintiff, but Sir Valentine, who led for the defendants, was quite another matter. One of the chief points triumphantly vindicated in the case and emphasised in the report was that the Press should not photograph people against their will. It was found necessary to fall back on the only known existing likeness or approximate likeness of him, a snapshot, bareheaded, taken at a sporting event (it is said, with a telephoto lens). The background, a cigarette and the straps of his field-glasses, had to be eliminated in the process of adapting it. The curious may compare the final result with the original published a few days ago in the daily Press. Neither bears any very close resemblance to the Holmes the Temple knew. Incidentally, the *Lea* case perpetuates a very fine example of his style in court. He has been called "a lawyer pure but by no means simple," and his cross-examination of the plaintiff makes very entertaining reading, particularly the passage about the red carnation, its purchase and symbolism. There was much shrewd knowledge of the world behind the legal learning, but perhaps the most remarkable thing in the career that closes is the best: he never made an enemy.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

Minimum Scale of Conveyancing Charges

Sir,—Will you allow me, as the originator of this correspondence, to thank you for your support and add a few words?

Though I entirely agree with the general propositions of Mr. G. C. Jones, of Reading [*ante*, p. 529], I believe he errs as to the origin of this matter.

The agitation has not emanated from "higher quarters," governmental or otherwise, but from some of the provincial law societies, and it is certain of the provincial members of the Council, whom Mr. Jones wishes to increase, who must take the greater share of the discredit. The Council is grievously at fault in giving way to it, but it has, after all, been recently engaged on other matters of first importance and urgency and deserves our general gratitude.

To resign from The Law Society should surely be a last resort. Is it not better to fight this and any other tendency towards absolutism from within its ranks? I have notified the Society that I desire to exercise my fundamental rights of access to the Master of the Rolls by submitting a case in opposition to their application to him to approve the draft rules, and should be glad to hear from any who may wish to join with me in that course. Should it fail, it will still be possible to contest the Society's application to the court for a declaration that its proposals are *intra vires*.

As regards resignation from a provincial society, might I suggest that one should first consider whether the adoption of the minimum scale is within its rules? In the case of the incorporated societies, their objects often include the advancement of the standing and well-being of the profession, and it seems likely

that the scale would, for such societies, be *ultra vires*. If so, no bond given in support of it would be valid. I have heard one provincial secretary boast of keeping his members in ignorance of the present unenforceability of the scale, so the inquirer may need to be pertinacious.

R. E. BALL.

Chester.

Land Drainage Charges and the Purchaser

Sir,—As one who has had some little experience in administering schemes under s. 14 of the Agriculture (Miscellaneous War Provisions) Act, 1940, I was very interested in your recent article [*ante*, p. 509], particularly as I have often been an independent observer in arguments between solicitors acting for vendors and purchasers of land affected by these schemes as to the rights and liabilities of their respective clients.

I most emphatically do not agree with the opinion of your contributor that the principle enunciated in *Stock v. Meakin* applies to s. 14 of the above Act. The wording of the statutes there relied on is quite different, and whilst your contributor sets some store by the general words expressed by Vaughan Williams, L.J., nevertheless Sargant, J., in the case of *Farrer and Gilbert's Contract*, thought that these words were only for the purpose of assisting the construction he (Vaughan Williams, L.J.) placed on expressed or implied words in the statute which he was interpreting, and not for the purpose of creating a charge by virtue of those considerations alone.

Under the Public Health Act, 1875, the relevant parts of which were incorporated in the Private Street Works Act, 1892, the expenses incurred by a local authority are the charge on the premises in respect of which they were incurred, but under s. 14 of the 1940 Act the charge is the "sum payable to the Catchment Board under the last foregoing subsection," namely, "the amount apportioned under the scheme to that land of the net cost of the scheme," which is, of course, apportioned at the date of the demand.

The case of *Farrer and Gilbert's Contract* is deserving of more consideration than was given by your contributor. That was a case arising out of the London County Council (Improvements) Act, 1899, which appears to have some affinity to the Agriculture (Miscellaneous War Provisions) Act, 1940, inasmuch as each contemplated the carrying out of an improvement scheme and the recovery of the cost from the property which benefited therefrom. Sargant, J., decided that at the date of that contract, i.e., after the completion of the work but before the notice of the amount determined by the assessment, the land was subject to a mere potential liability to a charge.

I quite admit, however, that the distinctions are very fine. To get to the practical aspect of the matter, however, the Catchment Board has always to serve a notice on the owner of the land containing a copy of the scheme, and this should come to light on the usual inquiries being made: as an additional safeguard the purchaser's solicitor should inquire of the clerk to the Catchment Board whether the land is affected by a scheme when making his searches before contract.

As between vendor and purchaser, I consider that any reasonably minded solicitor should advise his client to abide by the principle set out in condition No. 20 of The Law Society's General Conditions of Sale. As between a Catchment Board and owner of land in a scheme, I consider that the charge does not attach to the land until the date of the demand. There is no doubt that the liability for payment to the Board is on the person who is the owner at the date of the demand, and a Catchment Board could probably most often enforce payment without recourse to the remedies given in subs. (5) (b) of s. 14.

S. VINCENT ELLIS,
Deputy Clerk,

Cambridge.

River Great Ouse Catchment Board.

Landlord and Tenant (Rent Control) Act, 1949, s.11

Sir,—In his article on p. 431 (2nd July, 1949) on the Landlord and Tenant (Rent Control) Act, 1949, your contributor places an interpretation on s. 11 of the Act which, with respect to him, I do not think it will bear.

If I read your contributor's article correctly, he is suggesting that, although a landlord has served a notice to quit, at any time during the currency of that notice a tenant obtains security of tenure providing he makes an application to the tribunal. While I agree with your contributor that although a landlord has given a notice to quit there is still a contract to which the 1946 Act applies until the end of the period of the notice, and the tribunal

can, therefore, entertain an application to fix a reasonable rent, I do not agree with him that the tenant gets any extension of the period of his notice.

Is your contributor correct in his statement that a tenant may now apply at any time during the currency of a notice to quit for an extension up to three months provided that the contract is referred? Surely he should say, provided the contract "has been referred."

The governing part of the clause in question is the opening sentence, i.e., "Where a contract to which the Act of 1946 applies 'has been referred' to a tribunal under that Act and that reference has not been withdrawn." From this I think it follows that the contract must have been referred before the notice to quit. The matter is also assisted by the sidenote "Power of tribunal under the Act of 1946 to extend security of tenure," which infers that the power given to the tribunal is to extend a security they have already given under a previous application under the 1946 Act.

As I am chairman of a tribunal perhaps you will allow me to sign

CHAIRMAN.

[R.B. writes—

While I appreciate the force of our correspondent's contentions I still prefer my own interpretation of s. 11 (1), for these reasons:—

The amendment does not give a tenant a right to any extension whether or not determination of the reasonableness of the rent is sought. So much is common ground between our correspondent and myself; it was at one time apprehended, i.e., by landlords, that Parliament proposed to authorise extensions merely, as it were, because the tenant "had nowhere to go to."

But both when mentioning the reference and when mentioning the notice to quit the subsection used the perfect tense, "has been referred, has been served," not "is served" but "at any time... has been served." Taken by itself, I would submit that if a tenant receives a notice to quit on Monday, he may refer the contract on Tuesday and at the same time make his application for an extension, which application can be dealt with before the eventual hearing of the reference.

In support of this there is the consideration that the enactment is an amending one; s. 5 of the 1946 Act, which is left unrepealed, deals, as its marginal note says, with "notice to quit served after reference" and automatically gives three months' extension unless the tribunal otherwise directs. (The announcement often made, "and we give three months' security," is otiose when notice has been given after a reference.) So one might ask what, if the new provision does not extend to cases in which references follow notices to quit, could it effect? Surely it would mean that, if s. 5 of the 1946 Act were repealed, by implication tenants would be worse off.

I think the idea is to enable a tenant to approach his landlord and say, "What about a reduction?" without enabling the landlord to react by at once determining the tenancy!]

Referees under the Landlord and Tenant Act, 1927

Sir,—I would like to comment on the article on the Leasehold Committee's Report which you published on 6th August, 1949. I do not question the merits of the tribunal appointed under the Landlord and Tenant Act, 1927, which I do not think are at issue, nor do I wish to discuss either the proposal of the Leasehold Committee to establish a new tribunal, or the case argued against this proposal.

In the course of his argument, however, your contributor makes a statement which I construe as an implication that lawyers are as good as surveyors at valuing real property. I can assure the author that surveyors are not slow to acknowledge the prerogative of lawyers to deal with questions of law, but I can also assure him that they are equally convinced of the superiority of their own qualifications for making such valuations. If lawyers are at an advantage in dealing with questions of law, and no disadvantage in matters of valuation, the logical inference would be that the services of surveyors on the 1927 Act panel could be dispensed with; but I do not believe that Mr. L. G. H. H.-S. would seriously make such a suggestion.

A. H. KILLICK,

Secretary,

The Royal Institution of Chartered Surveyors.

[We think our correspondent has detected a non-existent implication. The function of a referee is to find the facts after hearing expert evidence on both sides. Although this is a function for which a lawyer's training particularly fits him, our contributor did not claim more than equality for lawyers.—Ed.]

NOTES OF CASES

COURT OF APPEAL

MAINTENANCE: COURT'S GUIDANCE TO REGISTRAR
Sydenham v. Sydenham

Bucknill, Asquith and Denning, L.J.J. 15th June, 1949
Appeal from a decision of Mr. Commissioner Grazebrook.

The appellant and his wife were married in 1941. In 1942 he committed adultery. The parties continued to live together until 1944, when the wife committed adultery. Having learnt of that misconduct, the husband committed adultery again in 1946. The commissioner refused to exercise his discretion in favour of the husband and dismissed his petition, in substance because he considered that the wife's adultery was to some extent the result of the husband's earlier adultery. He exercised his discretion in favour of the wife and granted her a decree *nisi* on her petition on the ground of the husband's adultery. The husband appealed.

BUCKNILL, L.J.—ASQUITH, L.J., agreeing—said that the Commissioner had misapprehended facts and given weight to irrelevant and unproved matters. While not prepared to reverse the Commissioner's decision granting the wife a decree, he thought him wrong in refusing to grant a decree also to the husband, whose appeal must accordingly be allowed.

DENNING, L.J., said that under the present practice of the Divorce Court, maintenance was not awarded on the making of the decree as s. 190 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, prescribed: it was only awarded at a later stage by the registrar, who was naturally influenced by the form in which the decree was pronounced. There was no blinking the fact that the form of the decree was often no real guide to the conduct of the parties or to the merits of a claim for maintenance. The current phrase whereby the court said that it exercised its discretion in favour of one side or the other conveyed the impression that the court was saying that his or her conduct was excusable, whereas it was often saying no such thing. It was only saying what the statute authorised it to say, namely, that it was exercising its discretion to grant a divorce. It left any claim to maintenance entirely undecided. There was nothing in the statute to say that a wife, against whom a decree had been made, could not be awarded maintenance. The statute merely said that on a decree of divorce the court might award maintenance to the wife, and in awarding it should have regard, among other things, to the conduct of the parties. If the state of work in the Divorce Court did not enable that to be done by the judge who tried the case, and who had the best means of knowing their conduct, then the registrar must do the best he could. There was no reason why the judge should not in his judgment make any observations which he thought fit to guide the registrar on this point. The form of decree pronounced by the commissioner in the present case did not give a correct picture of the conduct of the parties.

Appeal allowed.

APPEARANCES: *Levy, K.C.*, and *John Latey (Capel Cure, Glynn Barton & Co.)*; *Karminski, K.C.*, and *S. Myer (S. Myers and Son)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SOVEREIGN IMMUNITY: SOVIET NEWS AGENCY
Krajina v. Tass Agency (of Moscow)

Tucker, Cohen and Singleton, L.J.J. 27th June, 1949
Appeal from Birkett, J., in chambers.

A statement defamatory of the plaintiff appeared in the issue of 7th May, 1948, of the "Soviet Monitor," a publication distributed in this country by the Tass Agency free of charge. The plaintiff issued a writ claiming damages for libel, the defendants being described as "The Tass Agency (of Moscow), trading as a firm or corporation at No. 72-78 Fleet Street in the City of London." The defendants entered a conditional appearance, but subsequently obtained an order from Birkett, J. (affirming Master Simner), setting aside the service of the writ and staying all proceedings on the ground that the Tass Agency was not amenable to the jurisdiction of the courts of this country. The defendants had produced a certificate by the Soviet Ambassador in London that "The Telegraph Agency of the Union of Soviet Socialist Republics, commonly known as Tass, or the Tass Agency, constitutes a department of the Soviet State . . . exercising the rights of a legal entity." The plaintiff adduced evidence that the Agency had, until the issue of the writ, been registered under the Registration of Business Names Act, 1916. According to a translation of the Russian statute or decree establishing the Tass Agency, cl. 15 provided: "The Telegraphic Agency of the U.S.S.R. and the Telegraphic Agencies of the Union Republics

enjoy all the rights of a juridical person." He therefore contended that "Tass" was a separate juridical entity and that the doctrine of sovereign immunity did not apply to it.

COHEN, L.J., said that the Russian Ambassador's certificate stating that the Tass Agency enjoyed all the rights of a legal entity was not enough to show that the Tass Agency was in fact a separate legal entity. On the evidence it was not established that the agency was a separate legal entity not entitled to the immunity granted to a department of State. The appeal must, therefore, fail. Even if it had been established that the agency was a separate legal entity, he was not satisfied that it would necessarily follow that immunity would be lost. That point, however, did not arise for decision.

TUCKER, L.J., agreeing, said that the onus of proof was on the plaintiff to prove that the agency, a department of State, was a separate legal entity, and he had not discharged that onus. Their decision was only binding between the immediate parties on the evidence before the court. Singleton, L.J., agreed.

Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *W. T. Wells (Denton, Hall & Burgin)*; *Pritt, K.C.*, and *Gahan (Lawrence Jones & Co.)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: EXCESSIVE RENT: FURNISHED
LETTING*Lederer and Another v. Parker and Another*

Bucknill and Asquith, L.J.J., and Hodson, J. 25th July, 1949
Appeal from Marylebone County Court.

The plaintiffs claimed from the defendants, their landlords, under s. 9 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as modified by Sched. I to the Rent and Mortgage Interest Restrictions Act, 1939, the repayment of excessive rent. The premises in question were a furnished "flatlet" at Maida Vale, of which the rateable value was less than £100 a year, and which in January, 1947, the landlords let to the tenants. The rent of £3 13s. 6d. a week included payment for the use of furniture as well as attendance, and it was agreed that a substantial portion of the whole rent was attributable to those things. By s. 9 (1) of the Act of 1920, as modified by the Rent, etc., Act, 1939: "Where any person lets . . . any dwelling-house to which this Act applies . . . at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the tenant that the rent charged is yielding . . . to the landlord a profit in excess of" a reasonable profit as defined, the total excess paid "shall be repaid to the tenant." It was argued for the landlords in the county court that s. 9 (1) concerned only houses "to which this Act applies," and that the "flatlet" in question was not such a house because a substantial portion of the rent was fairly attributable to attendance and the use of furniture. The county court judge gave judgment for the tenants for £14 10s., and the landlords now appealed. (*Cur. adv. vult.*)

ASQUITH, L.J., in a written judgment with which BUCKNILL, L.J., and HODSON, J., agreed, said that the two dominant purposes of the Rent Restriction Acts were (1) to prevent rises in rents beyond prescribed limits, and (2) to protect tenants from eviction. Section 9 (1) was directed purely to limitation of rent. Therefore the expression "dwelling-house to which this Act applies" there meant a dwelling-house whose rateable value was within the prescribed limit (in London £100). The flat in question was accordingly for the purposes of s. 9 (1) "a dwelling-house to which this Act applies" notwithstanding that, as a substantial portion of the whole rent was agreed to be attributable to the use of furniture and attendance, it was outside the Acts by virtue of proviso (i) to s. 12 (2) of the Rent Restriction Act, 1920, as amended by the Rent, etc., Act, 1923—though in that context outside the Acts only for the purposes of a claim to possession. The proviso to s. 12 (2) began with the words "save as otherwise expressly provided," and s. 9 (1) clearly did "expressly provide otherwise." The second contention for the landlords, on which they relied more strongly, was that in any event s. 9 (1) spoke only of rent including payment in respect of the use of furniture, whereas here the rent included a payment in respect of attendance as well as furniture, so that the flat in question was not within s. 9 (1). But the rent did not any the less include a payment in respect of furniture because it also included a payment in respect of some other extra, such, for example, as attendance. That point also failed.

Appeal dismissed.

APPEARANCES: *Norman King (Amery-Parkes & Co.)*; *F. A. Hopkinson (Good, Good & Co.)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

INVITOR AND INVITEE: "UNUSUAL" DANGER

Horton v. London Graving Dock Co., Ltd.

Lynskey, J. 2nd June, 1949

Action.

The plaintiff, a boiler maker and electric riveter of great experience, was employed by sub-contractors of the defendant company on a trawler in the latter's wet dock. The workman, apart from his general experience, had been working on the ship for four months when an accident occurred to him in a part of the ship where he had been working for a month. The accident occurred through his foot slipping off an angle iron, part of the staging erected by the defendants, on which he had to step. He claimed damages against the defendants for negligence.

LYNSKEY, J., said that the workman was undoubtedly an invitee. It was quite clear from the statement of the duty of an invitor by Willes, J., in *Indermaur v. Dames* (1886), L.R. 1 C.P. 274, at p. 288, that the only duty imposed on the invitor or occupier of premises was to prevent damage to the invitee from unusual danger. That raised the question what was "unusual" danger. Was it danger unusual generally, unusual in premises of the type, description and use to which the invitation was extended, or unusual from the point of view of the particular invitee, regard being had to the type, description and use of the premises to which he had been invited? In his view "unusual" danger meant a danger unusual from the point of view of the particular invitee. It must be from his point of view unexpected in the particular circumstances in which he was availing himself of the invitation. It might be that another person might expect such dangers to exist or might know of their existence in the premises to which he was going; but if the invitee, acting reasonably and exercising due care for his own safety, did not appreciate the existence of the danger, or its nature or extent, it would be to him an unusual danger. This workman was an experienced boiler maker and welder. He had been employed in the vessel for four months, and for more than a month had been welding in the part of the ship where the accident took place. He knew from experience that he had to use the angle irons if he wished to step from one plank to another; and, with his experience, such risk as there was in doing so was obvious to him. It was said for the workman that, unless the defence of *volenti non fit injuria* would have succeeded, the risk remained an unusual one for him. He (his lordship) was not prepared to accept that contention. It was enough that the invitee appreciated the existence of the danger and its nature and extent, even although he did not freely and voluntarily, expressly or impliedly, agree to incur the risk. If it had been necessary to decide the point, he would have held that the workman had voluntarily so agreed. In the result there was no breach of duty on the part of the defendants and the workman's claim failed. Judgment for the defendants.

APPEARANCES: *Edgedale, K.C.*, and *C. J. A. Doughty (Shaen Roscoe & Co.)*; *Marven Everett (Carpenters)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INVITOR AND INVITEE: FRIEND MEETING PASSENGERS AT RAILWAY STATION

Stowell v. Railway Executive

Lynskey, J. 2nd June, 1949

Action.

The plaintiff, a surgeon, went on 30th March, 1948, to Paddington Station to meet a train. At the station he slipped on a patch of oil, fell, and suffered injuries. He brought this action for negligence against the Railway Executive in respect of those injuries.

LYNSKEY, J., said that, applying the definition of an invitee laid down by Lord Buckmaster in *Fairman v. Perpetual Investment Building Society* [1923] A.C. 74, at p. 80, as a person invited to premises "by the owner or occupier for purposes of business or of material interest," the plaintiff was an invitee of the Executive. It was common knowledge that the Executive did permit people to come and welcome arrivals, and they put up arrival indicators for them. The Executive had an interest from the point of view of their business in allowing the plaintiff on to their premises for the convenience of the passengers whom he was to meet, and that interest was sufficient to make him an invitee. He (his lordship) was fortified in that view by *Watkins v. Great Western Railway Company* (1877), 37 L.T. 193. The duty owed to an invitee, as he had enunciated it in *Horton v. London Graving Dock Company, Ltd.* (see above), was to prevent injury from unusual danger from the point of view of the particular invitee. The Executive were in breach of that duty to the plaintiff. A person walking down a railway platform

was entitled to expect it to be free from such a danger as the oily patch in the present case. Judgment for the plaintiff for £523.

APPEARANCES: *Dave (Tatton, Gaskell & Tatton)*; *Humfrey Edmunds (M. H. B. Gilmour)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

WIFE'S SUMMONS WITHDRAWN: FRESH SUMMONS ON SAME FACTS

Land v. Land

Lord Merriman, P., and Barnard, J. 16th June, 1949

Appeal from Manchester City Justices.

The respondent wife, at the hearing, withdrew a summons based on an allegation of constructive desertion by the appellant, her husband, after stating in cross-examination that she did not need the money for herself, but for the child of the marriage. An order was subsequently made under the Guardianship of Infants Acts in respect of that child. On a fresh summons taken out by the wife, the justices found the husband guilty of desertion and made an order for maintenance in favour of the wife. He appealed on the ground, among others, that "the matter of complaint" upon which the order was made had previously been before the justices when the wife had unconditionally withdrawn "the complaint."

LORD MERRIMAN, P., said that it was contended for the husband that, on the authorities, at any rate so far as they related to the matrimonial jurisdiction, the withdrawal of the first summons precluded the wife from saying thereafter that she had been deserted by her husband when she left him in April, 1946. That argument originated from *Pickavance v. Pickavance* [1901] P. 60, the headnote to which read: "The withdrawal of a summons under the Summary Jurisdiction (Married Women) Act, 1895, has the effect of putting an end to the complaint in respect of which it is issued, and, after the withdrawal, no fresh summons can be issued upon the same cause of complaint." In its last two lines, that headnote went too far. In his opinion, the court based its decision in *Pickavance v. Pickavance, supra*, on the fact that the second complaint there had been made after the statutory period of six months had elapsed from the date of the matter of the complaint: that only was what was in the minds of the judges who decided that case. They were only considering the machinery of complaints, and had held that, when the wife in that case withdrew her summons, the complaint ceased to exist, and that, as a fresh complaint could only be made out of time, the justices had no jurisdiction to hear it. The court was not there thinking in terms of *autrefois convict* or *autrefois acquit* or estoppel. *Hopkins v. Hopkins* [1914] P. 282 was based on a misapprehension of what was really decided in *Pickavance v. Pickavance, supra*, but should not be binding on the court. To hold that for some reason peculiar to matrimonial cases a withdrawal of a complaint, whether on a preliminary point or on the merits of the case, operated in any way as an estoppel, would be to place the matrimonial jurisdiction in a state of unwarranted isolation in the general system of law. There was no warrant for that. The justices, therefore, had jurisdiction to entertain the second summons because, since the matter of complaint was an allegation of continuing desertion, no question of a time limit in making the complaint arose. For other reasons, however, his lordship held, there would be a re-hearing.

BARNARD, J., agreeing, said that in *Hall v. Hall and Richardson* (1879), 48 L.J.P. 57, a husband filed a petition for divorce in May, 1873, which was, on the application of the petitioner, dismissed in July, 1874. When in 1878 the husband presented a fresh petition charging the same acts of adultery as before, it was held that there was no estoppel. That case had been approved by the Court of Appeal in *Goldblum v. Goldblum* [1939] P. 107. Appeal dismissed.

APPEARANCES: *H. Gore (Jaques & Co., for Samuel Bieber and Bieber, Manchester)*; *J. E. S. Simon (Field, Roscoe & Co., for Frank Leigh & Johnson, Manchester)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVORCE: CONNIVANCE

*Fellows v. Fellows**Manning v. Manning and Fellows*

Willmer, J. 21st June, 1949

Petitions for divorce.

Mrs. Fellows, the wife of the petitioner in the first petition, alleged that she overheard her husband boast that he had seduced the wife of the respondent in the second petition. Manning, the husband petitioner in the second petition, had his suspicions

aroused a month later. Both petitioners consulted a solicitor, and thereafter, while remaining on outwardly friendly terms with their spouses, by various manoeuvres sought evidence for divorce. In the result, the two respondents were, on 2nd October, 1948, caught in the act, which was the one act alleged in the petitions. The defence in each case was connivance, or, alternatively, conduct conducing. (*Cur. adv. vult.*)

WILLMER, J., in his written judgment, said that the suggestion was that, though innocent victims at the outset, nevertheless (after becoming suspicious of the relations between their spouses) the petitioners made up their minds that they wanted their freedom, and to that end, with their eyes open, acquiesced in and assented to the continued association of their spouses in the hope, and with the intention, of obtaining evidence of adultery against them. There were circumstances which gave ample cause for suspicion, but it was not necessary to determine, nor was there sufficient evidence to determine with certainty, whether adultery had been committed at any time before 2nd October, 1948. Therefore, the petitioners must stand or fall by the adultery of that date. The crucial question was whether that particular act of adultery, or the association which had immediately led to it, was connived at. In *Churchman v. Churchman* [1945] P. 44, at p. 50; 89 SOL. J. 508, Lord Merriman, P., said that it was of the essence of connivance that it preceded the event, and that, generally speaking, the material event was the inception of the adultery and not its repetition. On the authority of that passage

it might be argued that it would not be permissible to find connivance unless the inception of the adulterous association were shown to have been connived at. That would involve determining the date of the inception of the adultery, which was impossible on the evidence. He (Willmer, J.) was satisfied, however, that Lord Merriman, P., never intended his words to be construed in so narrow a sense as to make it possible for a spouse to connive with impunity at repeated acts of adultery provided that he or she was not guilty of connivance at the inception of the adulterous association. That was made clear in his judgment, at p. 52. Whether or not there were any prior acts of adultery, the petitioners must fail if they connived at the act of adultery of 2nd October or at the association which immediately led to it. Suspecting their spouses of forming an adulterous association, and knowing that that association would almost inevitably lead to adultery, if indeed adultery had not already taken place, the petitioners not only made no effort to stop the association, but actually took part in promoting and encouraging it for the purpose of spying on their spouses to obtain evidence for divorce, while at the same time deceiving them by maintaining a facade of normal married life. From such petitioners the court was bound to withhold relief. Petitions dismissed.

APPEARANCES: *Henry Burton and Stewart Oakes* (Leigh and Johnson, Manchester); *K. Burke* (Heath, Sons & Broome, Manchester); *D. Bailey* (Frank Douglas, Law Society, Manchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Bacon (Rationing) (Amendment) Order, 1949. (S.I. 1949 No. 1495.)
Draft Civil Defence (Ambulance) Regulations, 1949.
Draft Civil Defence (Burial) Regulations, 1949.
Draft Civil Defence (Evacuation and Care of the Homeless) Regulations, 1949.
Draft Civil Defence (Hospital Service) Regulations, 1949.
Draft Civil Defence (Sewerage) Regulations, 1949.
Draft Civil Defence (Water Supplies) Regulations, 1949.
Control of Paper (Economy) Order, 1949. (S.I. 1949 No. 1506.)
Crop Acreage Payments (Scotland) Order, 1949. (S.I. 1949 No. 1457.)
Education Authority Bursaries (Scotland) Regulations, 1949. (S.I. 1949 No. 1489.)
Export of Goods (Control) (Amendment No. 5) Order, 1949. (S.I. 1949 No. 1480.)
Firemen's Pension Scheme (No. 2) Order, 1949. (S.I. 1949 No. 1469.)
Gas (Conversion Date) (No. 6) Order, 1949. (S.I. 1949 No. 1501.)
Grass and Forage Crop Drying (Loans) (Scotland) Scheme, 1949. (S.I. 1949 No. 1468.)
Legal Aid and Advice Act, 1949 (Commencement) (No. 1) Order, 1949. (S.I. 1949 No. 1503.)
This Order brings ss. 8 to 11 and s. 13 of the Act into force on 1st September, 1949. See p. 519, *ante*.
Licensing (Metropolitan Area Special Hours) Order, 1949. (S.I. 1949 No. 1482.)
Licensing (Special Hours) Regulations, 1949. (S.I. 1949 No. 1484.)
Licensing (Special Hours Certificates) Rules, 1949. (S.I. 1949 No. 1483.)
London Traffic (Prescribed Routes) (No. 19) Regulations, 1949. (S.I. 1949 No. 1494.)
Manufactured and Pre-Packed Foods (Revocation) Order, 1949. (S.I. 1949 No. 1498.)
Matches (Control of Prices) (No. 2) Order, 1949. (S.I. 1949 No. 1476.)
Merchant Shipping (Load Line Convention) (Liberia) Order, 1949. (S.I. 1949 No. 1430.)
National Health Service (Scotland) (Superannuation) (Amendment) Regulations, 1949. (S.I. 1949 No. 1479.)
National Health Service (Superannuation) (Amendment) Regulations, 1949. (S.I. 1949 No. 1467.)
National Insurance (Hospital In-Patients) Regulations, 1949. (S.I. 1949 No. 1461.)
National Insurance (Modification of Local Government Superannuation Schemes) (Amendment No. 2) Regulations, 1949. (S.I. 1949 No. 1466.)
New Towns (Occasional Licences) Order, 1949. (S.I. 1949 No. 1511.)

Police (Women) (Scotland) (Amendment) (No. 2) Regulations, 1949. (S.I. 1949 No. 1458.)
Retention of Cable over Highways (Buckinghamshire) (No. 3) Order, 1949. (S.I. 1949 No. 1481.)
Retention of Pipe under Highway (Somerset) (No. 1) Order, 1949. (S.I. 1949 No. 1490.)
Retention of Railway across Highway (Cumberland) (No. 1) Order, 1949. (S.I. 1949 No. 1487.)
Shredded Suet Order, 1949. (S.I. 1949 No. 1497.)
Stopping Up of Highways (Denbighshire) (No. 2) Order, 1949. (S.I. 1949 No. 1491.)
Stopping Up of Highways (Lancashire) (No. 2) Order, 1949. (S.I. 1949 No. 1492.)
Stopping Up of Highways (Warwickshire) (No. 1) Order, 1949. (S.I. 1949 No. 1509.)
Stopping Up of Highways (West Riding of Yorkshire) (No. 1) Order, 1949. (S.I. 1949 No. 1486.)
Sugar (Rationing) (Amendment No. 2) Order, 1949. (S.I. 1949 No. 1496.)
Superannuation (Local Government and Colonial Service) Interchange Rules, 1949. (S.I. 1949 No. 1463.)
Superannuation (Local Government and Public Boards) Interchange Rules, 1949. (S.I. 1949 No. 1464.)
Town and Country Planning (Control of Advertisements) Amendment Regulations, 1949. (S.I. 1949 No. 1473.)
See *ante*, p. 532, as to these regulations.
Utility Apparel (Maximum Prices and Charges) Order, 1949 (Amendment) Order, 1949. (S.I. 1949 No. 1475.)
Utility Apparel (Women's Domestic Overalls and Aprons) (Manufacture and Supply) (Amendment) Order, 1949. (S.I. 1949 No. 1508.)
Utility Corsets (Manufacture and Supply) (Amendment) Order, 1949. (S.I. 1949 No. 1505.)

PARLIAMENTARY PUBLICATIONS

Report of the Central Land Board for the period to 31st March, 1949. (Command Papers, Session 1948-49, No. 223.)

This is the first annual report of the Board to the Minister of Town and Country Planning and the Secretary of State for Scotland. It reviews the duties and organisation of the Board, and the work and consultation which took place before and after the appointed day. The genesis of the methods of applying for assessment of development charge and for compensation for loss of development value are also discussed. The situation in which land is offered for sale at more than existing use value is discussed, and it is stated that "The Board will continue to watch the position closely." The report concludes with a number of statistical analyses of applications for assessment of development charge and receipts thereof, etc.

Mr. J. C. Brookhouse, solicitor, of Tonbridge, former President of Kent Law Society, left £32,883.

Mr. John Robert Liversage, retired solicitor, of Southport, left £26,237, net personalty £26,070.

NOTES AND NEWS

Honours and Appointments

Mr. ARTHUR K. BROOKES, deputy clerk, has been appointed clerk to Biggleswade Rural District Council and Biggleswade Water Board in succession to the late Mr. P. R. Chaundler.

Mr. L. KAYE, assistant solicitor to Bromley Corporation, has been appointed assistant clerk and solicitor to Orpington Urban District Council.

Personal Notes

Mr. Colin Black, solicitor, of Darlington, was married at Croft recently to Miss Suzanne Cleminson.

Two years after joining the Kidderminster firm of Ivens and Morton, Mr. W. J. Bowdler and his late father entered into an agreement under which the firm undertook to employ the boy for five years if he would perfect himself in the art of shorthand writing. Mr. Bowdler fulfilled his part by gaining a certificate for shorthand writing at 160 words per minute and a shorthand teacher's diploma. The firm also honoured its part of the bargain by employing him for over fifty years longer than had been agreed, for Mr. Bowdler has just celebrated sixty years' service with the firm. The late Mr. George Longmore had been with the firm for seventy-three years and the late Mr. H. W. Gethin had been associated with it for fifty-eight years.

At a ceremony held in the Council Chamber at Abingdon, a set of tea forks and spoons was recently presented on behalf of members of the corporation to Mr. and Mrs. A. C. Croasdell. Mr. Croasdell left the town a month ago, after having held the office of town clerk for ten years, to become solicitor to the Gas Board at Birmingham.

Mr. Adrian de Fleury, who was admitted in 1894, celebrated his eightieth birthday at the Marylebone Magistrates' Court, where he has practised for the past fifty years.

Mr. John Kennedy, D.F.C., solicitor, of Dunfermline, was married on 3rd August to Miss Marion Chalmers, of Dunfermline.

Mr. S. V. Pinniger, for over thirty years Newbury Borough Coroner, is resigning for reasons of health; the resignation will take effect on 22nd October.

Miscellaneous

Paddington Rent Tribunal, formerly covering the Metropolitan Boroughs of Paddington and St. Marylebone, has been split into two. One tribunal now acts for the Parliamentary constituency of Paddington South and one for the Parliamentary constituency of Paddington North and for the Metropolitan Borough of St. Marylebone. The Paddington South Tribunal occupies the original offices at 47 Connaught Square, Hyde Park, W.2, and the Paddington North Tribunal is in new premises at 21 Bishop's Bridge Road, W.2.

The following are members of *Paddington South Tribunal* :—Major D. Graham-Poole (chairman); Mr. W. A. N. Battenberg (member and reserve chairman); Mr. M. Birks (member) and Mr. W. R. McIsack, Councillor A. Morris and Mr. H. D. Coe (reserve members). The members of *Paddington North Tribunal* are :—Mr. Edgar Macarsey (chairman); Sir Vivian Henderson (member and reserve chairman); Alderman C. A. Allen, J.P. (member); and Mr. E. J. W. Howell and Mr. F. W. Powe (reserve members).

Another recent Rent Tribunal area change is that the Borough of Scarborough and the Rural District of Pocklington have been brought into the York and District Tribunal area.

Of 526 candidates who sat for The Law Society Final Examination in June, 274 were successful. The Edmund Thomas Child Prize has been awarded to Mr. A. G. Brown, and the John Mackrell Prize to Mr. A. H. M. Smyth, M.A.

STAMP DUTIES AND NEW ISSUES

The following joint announcement was issued on 12th August by the Share and Loan Department of the Stock Exchange and the Issuing Houses Association :—

Under the Finance Act, 1949, which has now received the Royal Assent, the following situation will obtain :—

(1) Letters of allotment, provisional allotment letters, letters of renunciation, scrip certificates, and scrip (including letters of right) will attract none of the duties to which they are at present liable under the heading in the Stamp Act "Letters of allotment, &c."; nor will they be liable to the 6d. agreement

duty, nor (if in exceptional circumstances they are under seal) to the 10s. duty as deeds.

(2) Letters of acceptance on an offer for sale will not be liable to the 6d. agreement duty, but the Act contains no provision exempting them from the 10s. duty as deeds if in exceptional circumstances they are under seal.

(3) Registration application forms annexed to letters of allotment or letters of acceptance and forms of acceptance annexed to provisional allotment letters or letters of right may or may not constitute agreements if under hand and if under seal may or may not constitute deeds; this depends, *inter alia*, upon the wording of the documents. In any event they will no longer be liable to the 6d. agreement duty, but the Act contains no provision exempting them from the 10s. stamp to which they are at present liable if the circumstances are such that they constitute deeds.

(4) Receipt stamps. Even though allotment or acceptance letters may be so worded as to acknowledge the receipt of instalments already paid they will not be treated by the Inland Revenue as being liable to be stamped with a 2d. stamp as receipts. Where, however, receipts for instalments are attached to an allotment or acceptance letter, they will each require a separate receipt stamp. The Committee of London Clearing Bankers and the Issuing Houses Association have indicated to the Inland Revenue that in such cases they would not be prepared to use adhesive stamps and in consequence receipts attached to such documents must be submitted to the stamp office for the impressment of the 2d. stamp before issue;

(5) In cases of difficulty the Board of Inland Revenue have indicated to the Share and Loan Department of the Stock Exchange that they will always be ready to give their opinion on any particular document.

SOCIETIES

THE WEST MIDLANDS ASSOCIATION OF LAW SOCIETIES (comprising Herefordshire, Breconshire and Radnorshire Incorporated Law Society, North Staffordshire and District Law Society, Shropshire Law Society, Warwickshire Law Society, Wolverhampton Law Society, Worcester and Worcestershire Incorporated Law Society and Birmingham Law Society) held its first annual general meeting on 21st July. The following officers were elected: Mr. G. W. Moore (Warwickshire Law Society), President; Mr. Livingstone Dickson (North Staffordshire and District Law Society), Vice-President; Mr. John H. S. Addison (Birmingham Law Society), Secretary.

PRACTICE DIRECTION

CHANCERY DIVISION

ADOPTION OF CHILDREN ACT, 1926

The attention of practitioners is called to the provisions of s. 6 of the Adoption of Children (Regulation) Act, 1939, which came into force on the 1st June, 1943. This section applies where arrangements are made by a registered adoption society for the adoption of a child and regulates the time for applying to the court for an adoption order. The effect of the section is that the application may not be made until the expiration of three months from the time when the child was delivered into the care and possession of the adopter, but *must* be made within the following three months if the child has not been returned to the society. Any person contravening this section is liable on conviction to fine or imprisonment or both.

The provisions of this section do not appear to be widely known to practitioners and many applications are being made out of time.

A. H. HOLLAND,
Chief Master

29.7.49.

(Chancery Division).

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